



## LOW-INTEREST LOAN GUIDELINES

### Introduction

The Indiana Brownfields Program (“Program”) offers low-interest loans (“Loans”) to qualifying Indiana political subdivisions (as defined by Indiana Code (“IC”) 13-11-2-164(c)) (“Applicants”) for acquisition of, and environmental assessment, remediation, and demolition activities at, brownfield sites. Examples of political subdivisions that have qualified as Applicants for Program financial assistance in the past can be found on the Program’s web site at <http://www.in.gov/ifa/brownfields/>.

An eligible Indiana political subdivision may apply to the Program for a Loan to finance acquisition of, and environmental assessment, remediation, and demolition costs at, an identified brownfield within its jurisdiction. Not-for-profit or for-profit corporations may be co-applicants, but will not directly receive funding from the Program; a political subdivision may choose to grant or re-loan Loan proceeds to a not-for-profit or for-profit corporation as part of a redevelopment project subject to the conditions outlined below.

Not more than ten percent (10%) of the money available (unobligated dollars) in the Environmental Remediation Revolving Loan Fund (“Fund”) during a State fiscal year may be loaned or otherwise provided to any one Applicant IC 13-19-5-9(d). Therefore, Loan amounts fluctuate and will be tied to any other financial assistance provided by the Program to the Applicant in a fiscal year. Applicants should contact the Program to determine the maximum Loan amount available to the Applicant at the time an application is submitted.

A low-interest Loan may be partially forgivable as determined by the Program. Pursuant to statute, not more than twenty percent (20%) of the total amount of an eligible Loan may be in the form of a forgivable loan. IC 13-19-5-15. The amount of forgiveness will be determined on a project-by-project basis by Program staff. Specific economic development or redevelopment goals must be achieved before a political subdivision will be released from its obligation to repay a forgivable loan. *Id.* The criteria considered by the Program for eligibility for, and the conditions of, forgiveness are discussed in detail below.

There is no application deadline or application fee, although the Program reserves the right to request that the Applicant reimburse the Program for costs associated with outside legal counsel review provided to the Program for any Loan closed.

### Eligibility Criteria

To be eligible for Loan funding, Applicants must demonstrate the following at the time an application is submitted:

1. The Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) did not cause or contribute to the environmental contamination found on the brownfield or own

and/or operate at the site at the time of disposal of hazardous substances or release of petroleum on the brownfield at which the Loan will be utilized.

2. The Applicant meets the definition of political subdivision (as defined by IC 13-11-2-164(c)).
3. The Applicant has completed, or has caused to be completed, a written American Society for Testing and Materials (“ASTM”) Phase I (Standard E1527-05) report prepared in compliance with the All Appropriate Inquiries Final Rule (70 FR 66070) (*see* [http://www.epa.gov/swerosps/bf/aai/aai\\_final\\_rule.pdf](http://www.epa.gov/swerosps/bf/aai/aai_final_rule.pdf)).
4. The Applicant has completed, or has caused to be completed, a Phase II Environmental Site Assessment and has data of sufficient quality and quantity to support any planned remediation activities.
5. The Applicant verifies that adequate funding is committed to complete the remedial or demolition activities if the actual cost of remediation or demolition exceeds the requested Loan amount.
6. The current owner of the brownfield, if not the Applicant, has provided written consent for site access to perform the Loan-funded activities. Access to the brownfield must be given to the State, any consultant(s), the Applicant, and any of their respective representatives or agents for the duration of the Loan activities.

The following items are also threshold eligibility criteria and may disqualify an application from consideration for Loan funding:

1. The site is subject to an open or pending state or federal enforcement action.
2. The site is under Resource Conservation and Recovery Act Corrective Action.
3. The site presents an imminent threat to human health and the environment.

#### Eligible Uses of Loan Funds; Disbursement Procedures

Loans are available to acquire and/or conduct environmental assessment, remediation, and demolition activities at brownfield sites. Costs eligible for Loan funding include:

- Acquisition of property
- Limited environmental assessment and related activities
- Remediation Work Plan preparation
- Soil and groundwater remediation activities
- Demolition and disposal of structures
- Asbestos abatement
- Administrative Voluntary Remediation Program (“VRP”) expenses (i.e., VRP application fee, oversight fees, etc.)

Assessment and remediation activities conducted with Loan funds must be performed consistent with the Indiana Department of Environmental Management Risk Integrated System of Closure (“RISC”) guidelines. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on the detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant reduction level necessary. **All activities sought to be paid for with Loan funds must receive Program approval prior to implementation.**

Loan disbursements will be made by the Program to the political subdivision for payment to the consultant(s) (or sub-grantee or borrower) after the Program receives and approves invoices for work performed that is consistent with Program-approved activities.

## Competitive Bidding

Applicants must demonstrate that services to be reimbursed with Loan funding have been/will be competitively bid. Professional services need to be procured in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured in compliance with IC 36-1-12. Program Project Managers may assist in developing bid specifications for work to be performed with Loan funds. Applicants that do not submit detailed information demonstrating a competitive bidding process with their Loan applications will be required to do so before funding will be disbursed.

## Forgivable Loans

1. To be eligible for a forgivable loan, as a threshold matter, Applicants must be able to demonstrate that the Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) is not a liable party under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.*, (“CERCLA”) or Indiana’s Hazardous Substance Response Trust Fund law, IC 13-25-4. Under CERCLA § 107 and IC 13-25-4-8, current owners and operators of a facility, owners and operators of a facility at the time of disposal of a hazardous substance, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. Thus, an owner of contaminated land may be liable under CERCLA § 107 or IC 13-25-4 even though he/she did not cause or contribute to the contamination at the site. Note, however, that CERCLA § 107 and IC 13-25-4 do not apply to petroleum sites.

Applicants (or any other entity involved in the project) that are eligible, or that seek to become eligible, for a forgivable Loan based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (“BFPP”), (2) contiguous property owner (“CPO”), or (3) innocent landowner (“ILO”) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible Applicant. These include, but are not limited to the following:

- a. All Loan Applicants (or any other entity involved in the project) asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry,” as found in section 101(35)(B) of CERCLA, **on or before the date of their acquisition** of the property.
- b. Applicants seeking to qualify as a bona fide prospective purchaser or a contiguous property owner must not be:
  - a. potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through (a) any direct or indirect familial relationship; or (b) any contractual, corporate, or financial relationships; or
  - b. a reorganized business entity that was potentially liable or
  - c. otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
  - a. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
  - b. taking reasonable steps with respect to hazardous substance releases;

- c. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
- d. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
- e. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [*see* CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B)].

In order to demonstrate the above, or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), please provide written answers to the questions found in Attachment A as a part of your application.

Furthermore, if an Applicant intends to re-grant or loan Loan proceeds to a third party (i.e., co-applicant or developer), the Applicant must ensure that a borrower or sub-grant recipient is not potentially liable under CERCLA or IC 13-25-4 and may rely on its own investigation which can include an opinion from the borrower's or sub-grant recipient's counsel. However, the Applicant must advise the borrower or sub-grant recipient that the investigation and/or opinion of the borrower's or sub-grant recipient's counsel is not binding on the Program, Indiana Finance Authority, Indiana Department of Environmental Management or State. As part of its due diligence, however, the Program will request the information received by the Applicant in its investigation. If at any time during the effective period of the Loan the Applicant or any entity involved in the project is determined to be a responsible party under CERCLA § 107 or IC 13-25-4, any portion of the Loan that has been forgiven will become immediately due and payable by the Applicant subject to a reasonable repayment schedule determined by the Program based on the amount due.

2. The following additional criteria will be considered by the Program to determine the priority of a forgivable loan application:

- 1. Project involves an abandoned gas station or underground storage tank issues
- 2. Project is located within one-half mile (0.5) of any of the following:
  - a. A child care center (as defined by IC 12-7-2-28.4)
  - b. A child care home (as defined by IC 12-7-2-28.6)
  - c. A child caring institution (as defined by IC 12-7-2-29)
  - d. A school age child care program (as defined by IC 12-17-12-5)
  - e. An elementary or a secondary school attended by students in kindergarten or grades 1 through 12.

3. Specific economic development or redevelopment goals, as well as remediation goals, must be achieved *before* a political subdivision will be released from its obligation to repay a forgivable loan. These goals will be embodied in the Financial Assistance Agreement between the Program and the Applicant and must be prepared by the political subdivision, with public input, and tied to a schedule for their attainment. Considerations for the project goals tied to forgiveness shall include:

- End use of the site
- Remediation goals
- Economic development or redevelopment goals
- Number and types of jobs created, wages
- Non-business use such as parks or green space
- Tourism
- Direct or indirect effects of the development/redevelopment on the community

- Other economic indicators identified by the community
- Schedule

### Interest Rates and Repayment

Interest rates on Loans from the Fund will be 2.5% if the loan term is less than ten (10) years and 3% for loans that are ten (10) years or more. Loan recipients may be eligible to defer principal payments on loans for up to two (2) years to provide adequate time to budget for loan payments. Loan terms are flexible up to twenty (20) years. Loan recipients will be required to execute a Financial Assistance Agreement with the Indiana Finance Authority and the Office of Management and Budget.

### Application Procedure

Using the Program's online application system available on the Program's web site at [http://www.in.gov/ifa/brownfields/financial\\_assistance.htm](http://www.in.gov/ifa/brownfields/financial_assistance.htm), Applicants must complete the following and submit (upload) to the Program the following:

1. One fully-completed and digitally-verified online application;
2. Documentation evidencing the Applicant meets the definition of political subdivision (as defined by IC 13-11-2-164(c)); and
3. Written consent for site access from the current owner of the brownfield (if not owned by the Applicant); and
4. Phase I Environmental Site Assessment (ASTM E1527-05) and all other reports and maps illustrating previous environmental assessment activities; and
5. Sufficient detail of how costs will be allocated and the specific work to be performed (if remediation work is required); and
6. Documentation demonstrating competitive bidding for services to be reimbursed with Loan funds; and
7. Most recent audit from the State Board of Accounts; and;
8. An ordinance or resolution authorizing the political subdivision to enter into a Financial Assistance Agreement with the Indiana Finance Authority and designating the source of repayment; and
9. Feasibility study if the repayment source includes revenues; and
10. Other submittals as indicated in the application or as available.

The online application reflecting these guidelines is available at <http://www.brownfields.in.gov>.

### General Selection Criteria

The following criteria, in addition to those found in the Program's Assessment and Remediation Grant guidelines, will be used by the Program to determine the priority of a loan application:

- Ability to repay the loan
- Economic factors (including those considered for grant applicants)
- Economic development potential for the project, including jobs created
- Long term plans for the project
- Matching funds (local or private) supporting the project
- Strength of community/local support

- No responsible party issues
- Interest of a developer or company in the property
- Geographic disbursement of funds
- Environmental remediation

### Contact Information

We welcome comments on these guidelines at any time. Questions regarding these guidelines or low-interest loans in general can be directed to the Program's Financial Resources Coordinator by phone at (317) 234-1688. These guidelines may be modified at any time by the Indiana Finance Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

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## Attachment A

### Property Ownership Eligibility Questions

Indiana Brownfields Program (“Program”) funding may not be used to pay for response costs at a brownfield site for which the applicant (eligible political subdivision per IC 13-11-2-164(c)) or any other entity involved in the project (collectively, the “Applicant”) is potentially liable under CERCLA § 107 or IC 13-25-4. The following questions are intended to help the Program ensure that the Applicant is not liable under CERCLA for response costs at the site designated in its application. Please answer the following questions fully and in the order they appear. (Note: based on the responses, the Program may need to obtain additional information in order to make this determination).

1. Affirm that the Applicant is not potentially liable for contamination at the site under CERCLA § 107 (*e.g.*, as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and explain why.<sup>1</sup>
2. Enforcement Actions. Identify known ongoing or anticipated state or federal environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the Applicant is aware of regarding the responsibility of any party (including the Applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and the Program may conduct an independent review of information related to the Applicant’s responsibility for the contamination or hazardous waste at the site.
3. Information on Liability and Defenses/Protections.
  - a. Information on the Property Acquisition. To save space, the information in subsections i-v below may be combined into one response, though please be sure to fully answer each question. Describe:
    - i) How the Applicant acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
    - ii) The date the Applicant acquired or will acquire the property;
    - iii) The nature of the Applicant’s ownership (fee simple or other), if applicable;
    - iv) The name and identity of the party from whom the Applicant acquired ownership (*i.e.*, the transferor), if applicable;

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<sup>1</sup> Because current owners of sites are potentially liable under CERCLA, Applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D); IC 13-25-4-8(e)).

- v) All familial, contractual, corporate or financial relationships or affiliations the Applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which the Applicant acquired the property).
- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before the Applicant acquired (or will acquire) the property and whether the Applicant caused or contributed to any release of hazardous substances at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by the Applicant or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in the description:
- i) the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,<sup>2</sup> and the entity for which they were performed (state whether the assessment was performed specifically for the Applicant, or if not, the name of the party that had the assessment performed and that party's relationship to the Applicant); and
  - ii) who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since the Applicant acquired ownership (or the uses that the Applicant anticipates once it acquires the property) through the present, including any uses by persons or entities other than the Applicant. Please provide a timeline with the names of all current and prior users during the time of the Applicant's ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and the Applicant's relationship to the current and prior users.
- e. Continuing Obligations.<sup>3</sup> Describe *in detail* the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will

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<sup>2</sup> Please note that if the Applicant's Phase I assessment was conducted more than 180 days prior to the date it plans to purchase the property, the Applicant will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that the Applicant has or will conduct the appropriate updates within 180 days of purchase.

<sup>3</sup> Owners of contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, owners must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices.



exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps<sup>4</sup> to:

- i) stop any continuing releases;
- ii) prevent any threatened future release;
- iii) prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- i) comply with all land use restrictions and institutional controls;
- ii) assist and cooperate with those performing the cleanup and to provide access to the property;
- iii) comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- iv) provide all legally required notices.

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<sup>4</sup> Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substances may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site. Program technical staff are available to discuss reasonable steps for a site should an Applicant require assistance to determine the reasonable steps required at the brownfield.